

trates for keeping intoxicating liquor for the purpose of sale without a license, contrary to the Liquor License Act.

H. E. Rose, K.C., for the defendant.

J. R. Cartwright, K.C., for the Crown.

MIDDLETON, J., said that he had read the evidence carefully more than once; and, while he was not sure that he should have come to the same conclusion as that arrived at by the magistrates, there was evidence which could not be taken from a jury if the case had been one for a jury trial. There was the evidence of a man named Hazelton, who went to the place to get a drink, got it, and paid for it. He expected to get whisky. He did not know what he got—"It was poor stuff; it would not be a soft drink; would not swear what I got was intoxicating. . . . I went to Colton when Stamper was short of whisky; I would go to Colton's to get it, though I would not call it whisky." Whisky was found upon the premises; and, upon these facts, quite apart from the statutory presumption which may or may not have arisen, the magistrates could find that the whisky which was upon the premises was to meet the demands of a man who, like Hazelton, was seeking a drink of whisky.

The accused, having been given a search-warrant and not producing it, although his counsel had undertaken to file it, could hardly be heard to argue at this stage that the warrant was not shewn to have been a warrant under sec. 131 of the Liquor License Act.

The conviction should not be quashed on the ground that there was not sufficient evidence of identity of the accused with the person against whom the earlier conviction had been recorded. The provincial constable identified the accused, but his evidence was a good deal weakened upon cross-examination, although the cross-examination was directed largely to the recollection by the constable of the particular day of the former conviction. He closed his evidence on cross-examination thus, after producing a memorandum-book: "I am positive this is the same man, from the record made by myself. Don't recollect the day personally. As far as my personal recollection is concerned, I don't remember the day. The defendant is the same man as entered in the record who has been convicted to-day." There was no assertion on the part of the accused that he was not the same person.

*Motion dismissed with costs.*